



Jane Medeiros
Friedman
<Jane.Medeiros.Friedman@ci.new-bedford.ma.us>

To: Greg Dain/R1/USEPA/US@EPA
cc:
Subject: McCoy Field

04/09/2004 11:57 AM

Attorney Dain:

I'm still waiting for information needed to fill in the blanks, so I will need to get that to you on Monday. I did have an opportunity to review the deeds and the Plat and Lot info included with the NOI and I believe the following provides a clearer explanation of the City's ownership of the site:

The City of New Bedford acquired the McCoy Field site through a Treasurer's Deed to the City, recorded in the Bristol County Registry of Deeds (S.D.) at Book 849, Page 329, which includes Plat 69, Lots 125-132 and 135-142; and through a Treasurer's Deed to the City, recorded in the Bristol County Registry of Deeds (S.D.) at Book 885, Page 401, which includes Plat 75, Lots 167-174, 177-184, 209-228, 292-342.

The City's comments with regard to the language are limited to those issues we already discussed. However, I provided a copy to the Consent Agreement to the City's LSP, Alan Hanscom and, unfortunately, we have been missing each others phone calls. As soon as I hear back from him I will let you know if there are any additional comments.

Thanks.

Jane

Medeiros Friedman

Jane Medeiros Friedman, Esq.
Associate Solicitor ~ City of New Bedford
133 William Street
New Bedford, MA 02740
Tel: 508-979-1460
Fax: 508-979-1515

Notice of Confidentiality:

This transmission contains information from the City of New Bedford Law Department that may be confidential and that may also be privileged. Unless you are the intended recipient of the message (or authorized to receive it for the intended recipient), you may not copy, forward, or otherwise use it, or disclose its contents to anyone else. If you have received this transmission in error, please notify us immediately and delete it from your system.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

OCT 7 2004

Jane Medeiros Friedman, Esq.
Associate Solicitor - City of New Bedford
133 William Street
New Bedford, Massachusetts 02740

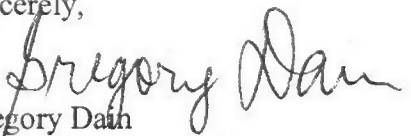
Re: In the Matter of: City of New Bedford; Docket No. TSCA-1-2004-0052

Dear Ms. Friedman:

Please find enclosed a draft of the amended Consent Agreement and Final Order (the "Agreement") for the above-referenced matter. Please have the appropriate city official sign the Agreement and return it to me. Once I receive the signed Agreement from you, I will have the appropriate EPA officials sign the Agreement.

Thank you for your cooperation in this matter. If you have any questions, please call me at (617) 918-1884.

Sincerely,


Gregory Dain
Senior Enforcement Counsel

cc: Marianne Milette, EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	
City of New Bedford, Massachusetts)	Docket No. TSCA-1-2004-0052
)	
Respondent)	
)	

AMENDED CONSENT AGREEMENT AND FINAL ORDER

The Complainant, United States Environmental Protection Agency, Region I ("EPA"), and Respondent, the City of New Bedford, Massachusetts (the "City" or "Respondent") entered into a Consent Agreement and Order that became effective on May 21, 2004 (the "original Order"), and which resolved Respondent's liability for certain violations of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 *et seq.*, and the Act's implementing regulations, "Polychlorinated Biphenyls ("PCBs") Manufacturing, Processing, Distribution in Commerce and Use Prohibitions," 40 C.F.R. Part 761.

Paragraph 18 of the original Order addressed areas of Respondent's property from which Respondent agreed to remove and properly dispose of PCB-impacted waste. Paragraph 20 of the original Order specified the date by which the activities set forth in paragraph 18 would be completed by Respondent.

Subsequent to execution of the original Order, EPA and Respondent realized that areas in addition to those set forth in paragraph 18 of the original Order would need to have PCB-impacted waste removed from them, and that the original September 30, 2004 completion date for the PCB-impacted waste removal could not be met, through no fault of Respondent.

In the Matter of City of New Bedford, Massachusetts; Docket No. TSCA-1-2004-0052

Accordingly, EPA and Respondent have agreed to amend the original Order to include additional areas from which PCB-impacted waste will be removed and properly disposed of by Respondent. In addition, EPA and Respondent have also agreed to set a new date for completion of the PCB-impacted waste removal.

Therefore, upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

The terms of the original Order and its attachments remain effective and are incorporated herein by reference with the exception of paragraphs 18, 20, 22 and 28, which are hereby amended as follows:

PCB-IMPACTED WASTE REMOVAL

18. Respondent shall conduct sampling and shall perform a removal of PCB contamination located at the Site, and in those areas in proximity to the Site where PCBs may have migrated or been disposed of as a result of the activities referenced in paragraphs 7 and 8 of this CAFO, in accordance with the May 14, 2004 Work Plan, as amended over time and approved by EPA (the "Work Plan"). For any areas in proximity to the Site from which Respondent removes PCBs, Respondent certifies that it has obtained lawful and effective access agreements from the owner(s) of such property. The Work Plan is included as Attachment 1 to the original Order. By entering into this CAFO, EPA is not certifying that the transporters or disposal facilities referenced in the Work Plan are legally authorized to conduct the activities set forth in the Work Plan. It shall be Respondent's responsibility to make such determinations.

In the Matter of City of New Bedford, Massachusetts; Docket No. TSCA-1-2004-0052

Moreover, nothing in this CAFO shall be construed to limit in any way EPA's or the Massachusetts Department of Environmental Protection's authority to address pollutants or contaminants of any kind other than PCBs that may exist at the Site. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

For Respondent:

Name

Title

Date

For Complainant:

Ken Moraff
Manager, Enforcement Office
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

Date

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.

Sharon Wells
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

Date

Greg Dain/R1/USEPA/US

09/30/2004 11:21 AM

To Jane Medeiros Friedman

<Jane.Medeiros.Friedman@ci.new-bedford.ma.us>

cc Kimberly Tisa/R1/USEPA/US@EPA, Marianne

Millette/R1/USEPA/US@EPA

bcc

Subject New Bedford CAFO amendment

Jane,

Here is a draft of the amended agreement as it would actually look. Please let me know if this is acceptable, and we can begin the process of executing the amended agreement.

Thanks. Greg.



New_Bedford_Draft_CAFO_09.30.04_Modified.wpd

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: _____)

City of New Bedford, Massachusetts)

Respondent _____)

Docket No. TSCA-1-2004-0052

AMENDED CONSENT AGREEMENT AND FINAL ORDER

The Complainant, United States Environmental Protection Agency, Region I ("EPA"), and Respondent the City of New Bedford, Massachusetts (the "City" or "Respondent") entered into a Consent Agreement and Order that became effective on May 21, 2004 (the "original Order"), and which resolved Respondent's liability for certain violations of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 *et seq.*, and the Act's implementing regulations, "Polychlorinated Biphenyls ("PCBs") Manufacturing, Processing, Distribution in Commerce and Use Prohibitions," 40 C.F.R. Part 761.

Paragraph 18 of the original Order addressed areas of Respondent's property from which Respondent agreed to remove and properly dispose of PCB-impacted waste. Paragraph 20 of the original Order specified the date by which the activities set forth in paragraph 18 would be completed by Respondent.

Subsequent to execution of the original Order, EPA and Respondent realized that areas in addition to those set forth in paragraph 18 of the original Order would need to have PCB-impacted waste removed from them, and that the original September 30, 2004 completion date for the PCB-impacted waste removal could not be met, through no fault of Respondent.

In the Matter of City of New Bedford, Massachusetts; Docket No. TSCA-1-2004-0052

Accordingly, EPA and Respondent have agreed to amend the original Order to include additional areas from which PCB-impacted waste will be removed and properly disposed of by Respondent. In addition, EPA and Respondent have also agreed to set a new date for completion of the PCB-impacted waste removal.

Therefore, upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

The terms of the original Order and its attachments remain effective and are incorporated herein by reference with the exception of paragraphs 18, 20, 22 and 28, which are hereby amended as follows:

PCB-IMPACTED WASTE REMOVAL

18. Respondent shall conduct sampling and shall perform a removal of PCB contamination located at the Site, and in those areas in proximity to the Site where PCBs may have migrated or been disposed of as a result of the activities referenced in paragraphs 8 and 9 of this CAFO, in accordance with the May 14, 2004 Work Plan, as amended over time and approved by EPA (the "Work Plan"). For any areas in proximity to the Site from which Respondent removes PCBs, Respondent certifies that it has obtained lawful and effective access agreements from the owner(s) of such property. The Work Plan is included as Attachment 1 to the original Order. By entering into this CAFO, EPA is not certifying that the transporters or disposal facilities referenced in the Work Plan are legally authorized to conduct the activities set forth in the Work Plan. It shall be Respondent's responsibility to make such determinations.

In the Matter of City of New Bedford, Massachusetts; Docket No. TSCA-1-2004-0052

20. Respondent shall complete all PCB activities described in the Work Plan as amended over time and approved by EPA, by the dates specified in the Work Plan.

CLEANUP OF REMAINDER OF THE SITE

22. EPA and Respondent agree that the requirements for cleanup of any PCB contamination in areas other than those referenced in paragraph 18 of this CAFO and contained in the Work Plan, as amended over time and approved by EPA, are not being addressed in this CAFO. EPA expressly reserves all its rights to ensure in the future that Respondent undertakes all appropriate cleanup measures to address PCB contamination at the Site, in areas other than those referenced in paragraph 18 of this CAFO and contained in the Work Plan, as amended over time and approved by EPA, in accordance with 40 CFR 761.61. Moreover, nothing in this CAFO shall be construed to limit in any way EPA's or the Massachusetts Department of Environmental Protection's authority to address at the Site pollutants or contaminants of any kind other than PCBs.

28. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA for the violations alleged in this CAFO only as to the PCB-contaminated soils in the areas referenced in paragraph 18 of this CAFO and contained in the Work Plan, as amended over time and approved by EPA. EPA expressly reserves all its rights to address violations of Section 16(a) of TSCA relating to PCB-contaminated areas of the site other than the areas identified in the Work Plan, as amended over time and approved by EPA.

In the Matter of City of New Bedford, Massachusetts; Docket No. TSCA-1-2004-0052

Moreover, nothing in this CAFO shall be construed to limit in any way EPA's or the Massachusetts Department of Environmental Protection's authority to address pollutants or contaminants of any kind other than PCBs that may exist at the Site. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

For Respondent:

Name

Title

Date

For Complainant:

Ken Moraff
Manager, Enforcement Office
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

Date

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.

Sharon Wells
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

OCT 26 2004

Jane Medeiros Friedman, Esq.
Associate Solicitor - City of New Bedford
133 William Street
New Bedford, Massachusetts 02740

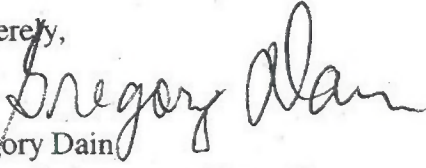
Re: In the Matter of: City of New Bedford; Docket No. TSCA-1-2004-0052

Dear Ms. Friedman:

Please find enclosed a copy of the fully executed Amended Consent Agreement and Final Order (the "Agreement") for the above-referenced matter.

Thank you for your cooperation in this matter. If you have any questions, please call me at (617) 918-1884.

Sincerely,


Gregory Dain
Senior Enforcement Counsel

cc: Marianne Milette, EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

City of New Bedford, Massachusetts

Respondent

)
)
) Docket No. TSCA-1-2004-0052
)
)
)

AMENDED CONSENT AGREEMENT AND FINAL ORDER

The Complainant, United States Environmental Protection Agency, Region I ("EPA"), and Respondent, the City of New Bedford, Massachusetts (the "City" or "Respondent") entered into a Consent Agreement and Order that became effective on May 21, 2004 (the "original Order"), and which resolved Respondent's liability for certain violations of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 *et seq.*, and the Act's implementing regulations, "Polychlorinated Biphenyls ("PCBs") Manufacturing, Processing, Distribution in Commerce and Use Prohibitions," 40 C.F.R. Part 761.

Paragraph 18 of the original Order addressed areas of Respondent's property from which Respondent agreed to remove and properly dispose of PCB-impacted waste. Paragraph 20 of the original Order specified the date by which the activities set forth in paragraph 18 would be completed by Respondent.

Subsequent to execution of the original Order, EPA and Respondent realized that areas in addition to those set forth in paragraph 18 of the original Order would need to have PCB-impacted waste removed from them, and that the original September 30, 2004 completion date for the PCB-impacted waste removal could not be met, through no fault of Respondent.

In the Matter of City of New Bedford, Massachusetts; Docket No. TSCA-1-2004-0052

Accordingly, EPA and Respondent have agreed to amend the original Order to include additional areas from which PCB-impacted waste will be removed and properly disposed of by Respondent. In addition, EPA and Respondent have also agreed to set a new date for completion of the PCB-impacted waste removal.

Therefore, upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

The terms of the original Order and its attachments remain effective and are incorporated herein by reference with the exception of paragraphs 18, 20, 22 and 28, which are hereby amended as follows:

PCB-IMPACTED WASTE REMOVAL

18. Respondent shall conduct sampling and shall perform a removal of PCB contamination located at the Site, and in those areas in proximity to the Site where PCBs may have migrated or been disposed of as a result of the activities referenced in paragraphs 7 and 8 of this CAFO, in accordance with the May 14, 2004 Work Plan, as amended over time and approved by EPA (the "Work Plan"). For any areas in proximity to the Site from which Respondent removes PCBs, Respondent certifies that it has obtained lawful and effective access agreements from the owner(s) of such property. The Work Plan is included as Attachment 1 to the original Order. By entering into this CAFO, EPA is not certifying that the transporters or disposal facilities referenced in the Work Plan are legally authorized to conduct the activities set forth in the Work Plan. It shall be Respondent's responsibility to make such determinations.

In the Matter of City of New Bedford, Massachusetts; Docket No. TSCA-1-2004-0052

20. Respondent shall complete all PCB activities described in the Work Plan as amended over time and approved by EPA, by the dates specified in the Work Plan.

CLEANUP OF REMAINDER OF THE SITE

22. EPA and Respondent agree that the requirements for cleanup of any PCB contamination in areas other than those referenced in paragraph 18 of this CAFO and contained in the Work Plan, as amended over time and approved by EPA, are not being addressed in this CAFO. EPA expressly reserves all its rights to ensure in the future that Respondent undertakes all appropriate cleanup measures to address PCB contamination at the Site, in areas other than those referenced in paragraph 18 of this CAFO and contained in the Work Plan, as amended over time and approved by EPA, in accordance with 40 CFR 761.61. Moreover, nothing in this CAFO shall be construed to limit in any way EPA's or the Massachusetts Department of Environmental Protection's authority to address at the Site pollutants or contaminants of any kind other than PCBs.

28. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA for the violations alleged in this CAFO only as to the PCB-contaminated soils in the areas referenced in paragraph 18 of this CAFO and contained in the Work Plan, as amended over time and approved by EPA. EPA expressly reserves all its rights to address violations of Section 16(a) of TSCA relating to PCB-contaminated areas of the site other than the areas identified in the Work Plan, as amended over time and approved by EPA.

In the Matter of City of New Bedford, Massachusetts; Docket No. TSCA-1-2004-0052

Moreover, nothing in this CAFO shall be construed to limit in any way EPA's or the Massachusetts Department of Environmental Protection's authority to address pollutants or contaminants of any kind other than PCBs that may exist at the Site. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

For Respondent:

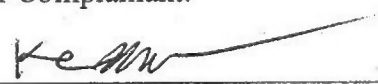

Frederick M. Kalisz, Jr.
Name

10-13-04
Date

Mayor

Title

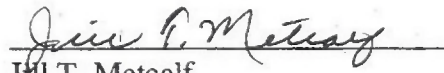
For Complainant:

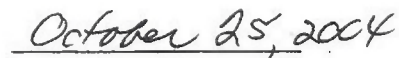

Ken Moraff
Manager, Enforcement Office
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

10/21/04
Date

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.


Jhl T. Metcalf
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1


Date

BEFORE THE ADMINISTRATOR

DOCKET NO.
TSCA 1-2004-0052

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Amended Consent Agreement and Final Order has been sent to the following persons on October 26, 2004, in the following manner:

Original and One Copy,
Hand Delivered:

Regional Hearing Clerk (RCH)
U.S. EPA, Region 1
One Congress Street
Suite 1100
Boston, MA 02114-2023

Copy by Certified Mail, Return
Receipt Requested:

Jane Medeiros Friedman, Esq.
Associate Solicitor – City of New Bedford
133 William Street
New Bedford, Massachusetts 02740

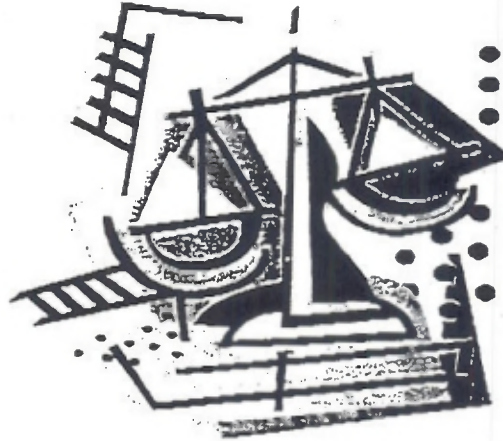
Gregory Dain

Date _____

CITY OF NEW BEDFORD

Law Department
133 William Street, Room 201
New Bedford, MA 02740-6163

Tel.# (508) 979-1460
Fax.# (508) 979-1515



FAX

TO: Greg Dain, Esq.
FAX: (617) 918-1809
FROM: Jane Medeiros Friedman
DATE: 5/18/04
RE: McCoy Field CAFO Signature Page
TOTAL PAGES INCLUDING COVER SHEET: 2

MESSAGES:

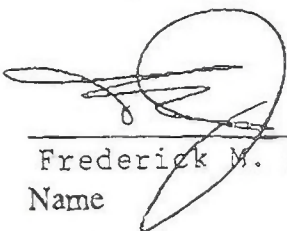
Original is in the mail (overnight)

areas identified in paragraphs 18 through 20, above. Moreover, nothing in this CAFO shall be construed to limit in any way EPA's or the Massachusetts Department of Environmental Protection's authority to address pollutants or contaminants of any kind other than PCBs that may exist at the Site. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

29. The parties shall bear their own costs and fees in this action.

30. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to it.

For Respondent:



Frederick M. Kalisz, Jr.

Name

5/18/04

Date

Mayor

Title